

EXHIBIT B

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

Case No. 3:18-cv-00197-RJC-DSC

BRUCE RHYNE and JANICE RHYNE,)
Plaintiffs,)
vs.)
UNITED STATES STEEL CORPORATION,)
et al.,)
Defendants.)

DEPOSITION OF ROBERT F. HERRICK,
Sc.D., CIH, FAIHA, called as a witness by and on
behalf of the Defendants, Chevron U.S.A., Inc., CRC
Industries, Inc., and Univar Solutions USA Inc.,
f/k/a Univar USA Inc., pursuant to the applicable
provisions of the Federal Rules of Civil Procedure,
before P. Jodi Ohnemus, RPR, RMR, CRR, CA-CSR
#13192, NH-LSR #91, MA-CSR #123193, and Notary
Public, within and for the Commonwealth of
Massachusetts, at Veritext Legal Solutions, 101
Arch Street, Suite 650, Boston, Massachusetts, on
Wednesday, November 6, 2019, commencing at 9:09
a.m.

1 looked for, was to see if I could identify a
2 particular CRC material that he used, and, in fact,
3 there was one included in the list.

4 Q. When you say you tried to identify a --
5 you know, a product that he used, I'm not sure I'm
6 following you.

7 What do you mean by that?

8 A. Well, you know, from his deposition he was
9 able to identify the brand, but as -- as you know,
10 of course, there's -- there's lots of different
11 formulations of CRC products, and he didn't really
12 have that level of recall as to, you know, what --
13 what the product number or what the particular name
14 was.

15 So that's what I was trying to drill down
16 to -- to find.

17 Q. And did this tell you what product he
18 used?

19 A. Yeah.

20 Q. "This" being the Approved Chemical List.

21 A. Yeah, that's one segment --

22 Q. Let me just -- I've marked this as Exhibit
23 2. I'm sorry about that.

24 Is this the Approved Chemical List that
25 we're talking about?

1 A. Let's see.

2 MR. FISHKIN: Do you want a copy of it?

3 MR. DuPONT: Let's see. Thanks.

4 Do we have a binder clip for his report or
5 something just so it doesn't go flying --

6 THE WITNESS: I've got this.

7 A. Yeah, this -- I mean, I never printed it
8 off. You know, I have it electronically, but this
9 looks familiar.

10 (Exhibit Herrick 2, Approved

11 Chemical List, PLF005295-339.)

12 Q. So that is the Approved Chemical List to
13 which you are referring in your footnotes 241 and
14 245?

15 A. I believe it is, yeah. Yeah.

16 Q. Okay. How did that Approved Chemical List
17 tell you that Mr. Rhyne used the CRC 3-36 product?

18 A. Well, I think I found it. I'm looking --
19 you know, I could look here again.

20 Q. It's at 305.

21 A. Oh.

22 Q. It's on there.

23 A. Okay. So I went down -- say again, I
24 didn't have it in printed copy, but I, you know,
25 looked through it on the computer, and found --

1 let's see -- "Cleaner, CRC 3-36, bulk CRC
2 Chemicals." That's the trade name and
3 manufacturer.

4 So that's -- that's how I found it.

5 Q. How did this entry on this list on this
6 page tell you that he actually used that product?

7 A. Oh, I see.

8 Well, it's -- it doesn't really. But
9 aside from the fact that, you know, as I look
10 through this, I'm pretty sure I remember that this
11 was the only CRC product that was identified, you
12 know, in this -- in this list. So that's what I
13 did to conclude that that's what he used.

14 Q. Sir, what is your rate of compensation in
15 this matter?

16 A. I -- I think the company -- I think the
17 billing out is at 450 an hour.

18 Q. All right. Are you billing out through
19 EH&E?

20 A. I am, yeah.

21 Q. Okay. And what is your professional
22 relationship with EH&E?

23 A. Well, I'm -- I'm a part-time employee.
24 I'm a senior scientist --

25 Q. Okay.

1 prior to starting your report?

2 A. That's a good question.

3 You know, I easily could have spent maybe
4 30 or 40 hours, because, you know, I had some of
5 the documents. I had Petty's report as a starting
6 point. So, you know, I looked at that before I
7 started writing my own report.

8 So, you know, that's probably a fair, you
9 know, number -- in that range.

10 Q. What did you use Petty's report for?

11 A. Well, it was really [, of a -- of a
12 background document. And, you know, I took a look
13 at the way he had organized the information and the
14 way he had described Rhyne's work history and --
15 and the way he had calculated his exposures.

16 So, you know, that was -- those were the
17 main things I looked for.

18 Q. Did you notice that Doctor Petty or Mr.
19 Petty did not calculate an exposure with a CRC
20 product?

21 A. I think that does -- that does sound
22 familiar, yeah.

23 Q. Okay. Do you recall why he didn't?

24 A. No, I really don't. Truthfully, I -- I
25 had a little trouble following his report just in

1 Q. And then he testifies to that again. The
2 questioner asked him the same question again.

3 A. Question was "What was the name of the CRC
4 product?" And his answer was "CRC is the only one
5 I --" and then the question: "Anything beyond
6 that?" And he said, "No, sir."

7 Q. Okay. So does that refresh your
8 recollection that he testified that he could not
9 identify the CRC product that he used?

10 MR. DuPONT: Objection. Form.

11 A. I -- this is, yeah. I think this is
12 pretty, you know, that -- that was the best
13 recollection he had. He remembered CRC, but he
14 wasn't able to identify a particular brand or
15 product name.

16 Q. All right. I'll take that back. Thank
17 you.

18 Do you recall anything in the record in
19 this matter that -- withdraw that.

20 Did you see any information that Mr. Rhyne
21 ever worked with or around a Berryman product?

22 A. I -- I don't remember that coming up at
23 all. I don't recall that he mentioned that he had
24 ever used Berryman, no.

25 Q. Did you see any information in the record

1 Q. And that is a product that you did not
2 perform an exposure assessment for; is that
3 correct?

4 MR. DuPONT: Form.

5 A. That's correct.

6 Q. If you go to page 30 of your report.

7 Do you see that there's -- oh, I'm sorry.

8 A. Got it.

9 Q. You see that there's a paragraph entitled
10 "Rapid Tap -- Tap Magic"?

11 A. Yes.

12 Q. Okay. And in the first sentence of that
13 paragraph you refer to the "Approved Chemical
14 List"; is that right?

15 A. Right.

16 Q. And you refer to the fact that the Pro Tap
17 Magic Cutting Fluid Red is contained on that
18 Approved Chemical List; is that right?

19 A. It is, yeah.

20 Q. Now, as I understand it, in the rest of
21 the paragraph you are communicating that you did
22 not estimate his benzene exposure from that source,
23 because the record evidence in the case didn't
24 indicate which specific Tap Magic product Mr. Rhyne
25 used.

1 Do I have that right?

2 A. You do, yeah.

3 Q. There's a discussion about Spotcheck in
4 the next paragraph there.

5 Do you see that?

6 A. I do.

7 Q. Spotcheck is another product that was on
8 the Approved Chemical List; is that right?

9 A. Right.

10 Q. But you also did not estimate his exposure
11 to benzene from that product; is that right?

12 MR. DuPONT: Form.

13 A. That's correct, yeah.

14 Q. And you didn't assess his exposure to
15 benzene from that product, because in your view the
16 record in the case did not indicate the composition
17 of the product as used by Mr. Rhyne.

18 A. That's true, yeah.

19 Q. Did you do anything to search for MSDSs
20 for Spotcheck?

21 A. I'm trying to remember if I did. I think
22 I probably did.

23 The one thing, you know, I found in -- in
24 searching the internet is that, you know,
25 occasional -- you know, sometimes you can get a

1 Q. Doctor, did you see anything in the record
2 in this matter that told you that Mr. Rhyne did, in
3 fact, actually work with or around CRC 3-36?

4 A. Other than what we just looked at in the
5 deposition when he recalled using a CRC product,
6 but he didn't recall the -- the particular brand or
7 -- or product name.

8 Q. Right. And that's what I'm getting at. I
9 -- there was testimony -- without question -- in
10 which Mr. Rhyne said he used a CRC product, but I'm
11 focused on what product it was.

12 So -- so my question is did you see
13 anything in the record in this matter that told you
14 that Mr. Rhyne did, in fact, work with or around
15 the CRC 3-36 product?

16 A. Other than what was on the approved
17 product list for McGuire, that was the only thing
18 that really identified a particular CRC product.

19 Q. Did anyone ask you to run an exposure
20 assessment for the CRC 3-36 product?

21 A. Specifically --

22 Q. Yes.

23 A. -- beyond -- no, not beyond, you know, the
24 general request that I do the exposure assessment
25 for -- for Rhyne. There was no particular, you

1 Q. Do you know anything about the chemical
2 list, other than what's contained in the chemical
3 list?

4 A. I'm trying to remember if anybody asked
5 him about it. I don't remember there being any
6 discussion about the list from the depositions. So
7 beyond what's, you know, evident from looking at
8 the list, I really don't have any information
9 beyond that.

10 Q. Do you know if the list is authentic?

11 A. I don't have any reason to -- to doubt
12 that it is. It sure looks authentic to me.

13 Q. But do you know, one way or another --

14 A. I don't, no.

15 Q. -- whether it is.

16 Do you know whether it's a document that
17 was actually prepared by Duke Energy?

18 A. I guess I don't have it in front of me, do
19 I?

20 Q. Yeah, you should have in that stack. We
21 marked it as 2.

22 A. Oh, sorry. Here it is.

23 Q. Is that 2, did we mark it as?

24 A. Yeah, it's 2.

25 MR. DuPONT: It is.

1 A. Well, you know, the header on each page
2 does say: "McGuire Nuclear Station Approved
3 Chemical List," page number and a date. So, you
4 know, I -- I would infer that, you know, that --
5 that leads me to believe that it is authentic.

6 Q. Well, do you know if it was actually a
7 document that was prepared by Duke Energy?

8 A. Well, no one -- there's no -- in the
9 version that I saw there was no, you know, cover
10 letter or transmittal, or, you know, sign-off of
11 any kind. So I don't have any information beyond
12 what's here.

13 Q. If it was prepared by Duke Energy, do you
14 have any information concerning the circumstances
15 surrounding its preparation?

16 A. I don't remember that anybody -- you know,
17 that it really came up in any of the depositions as
18 to, you know, kind of, the circumstances or -- or
19 how it was prepared or why.

20 Q. Do you know when it was prepared?

21 A. Well, it is dated April 1st, 1992.

22 Q. Understand.

23 Do you know when it was prepared?

24 A. I don't, no.

25 Q. Now, do you understand that this applies

1 to chemicals approved for use at McGuire at a
2 particular time on April 1, 1992?

3 MR. DuPONT: Form.

4 A. I think that would be a reasonable
5 conclusion to reach, yeah.

6 Q. So this list doesn't tell you what the
7 approved chemicals were for any other Duke Energy
8 location; is that correct?

9 A. No, it doesn't.

10 Q. And it doesn't say that any of the
11 chemicals approved for McGuire -- withdraw that.

12 It doesn't say that any of these chemicals
13 listed as approved for McGuire were approved for
14 use at McGuire before April 1, '92 is that correct?

15 A. No, it looks like it's a -- you know, it
16 reflects a point in time, but, you know, you'd have
17 to speculate beyond that.

18 Q. Do you know for how long after April 1,
19 1992, these products were approved for use at
20 McGuire?

21 A. No, I don't.

22 Q. So you can't say they were still approved
23 for use at McGuire in May of 1992; for example?

24 A. No, I can't.

25 Q. Now, this list is -- I would represent to

1 you is 46 pages long, and it contains -- from my
2 quick review -- about 20 different chemicals on
3 each page, which gets us to about 900 chemicals.

4 Do you see that?

5 A. I think that looks like a reasonable
6 estimate, yeah.

7 Q. Do you know how many of these 900-or-so
8 chemicals were actually at McGuire on April 1,
9 1992?

10 A. I don't.

11 Q. Can you identify the ones that were
12 actually at McGuire on April 1, 1992?

13 A. No, I can't.

14 MR. DuPONT: Form. Compound.

15 Q. Can you identify the chemicals on this
16 list that were not actually at McGuire on April 1,
17 1992?

18 A. There's -- there's really no -- I don't
19 have any information that would let me do that.

20 Q. Do you know whether there were products at
21 McGuire at this time that were not on the approved
22 -- on this Approved Chemical List?

23 A. I -- I don't know that.

24 Q. Now, on the top right of this document
25 there's a reference to "Storage Color, Label, and

1 sprayer.

2 That's, you know, the extent of the
3 information that I have.

4 Q. Yeah. No, I understand that.

5 But I'm just trying to understand your
6 rationale in relying on this Approved Chemical List
7 which shows -- or purports to show that the product
8 is approved for use at McGuire at a time when he's
9 not at McGuire. I'm trying to understand your
10 rationale in taking this approved list to mean that
11 he worked with or around 3-36.

12 MR. DuPONT: Form.

13 A. When he was at Catawba?

14 Q. Yeah.

15 A. Right. No, I mean, I follow your point.
16 I guess I would just say that, you know, I wouldn't
17 find it to be unreasonable that the same products
18 were used across different facilities.

19 Q. Do you have any information that the same
20 products were used across different facilities at
21 Duke?

22 A. Well, as he said, you know, in his
23 deposition, that, you know, he used CRC at a time
24 when he was actually at Catawba, so that that's
25 about the only information that's in the record

1 that would shed any light on that.

2 Q. Do you have any information from the
3 record that the same products were used across
4 different locations at Duke?

5 A. You know, I don't remember that coming up.
6 I -- I wouldn't consider it to be unreasonable, but
7 it isn't really explicit in the record.

8 Q. Is it implicit in the record?

9 A. Well, you know, knowing a little bit
10 about, kind of, you know, how big companies like
11 Duke operated, I would say it's not unreasonable to
12 think that the same products were used across
13 facilities.

14 Q. How do you know how Duke operated?

15 A. Well, I -- I know a bit about how major
16 corporations tend to function and how they tend to
17 procure supplies and how they're -- especially when
18 they're, you know, operating similar facilities.
19 So I guess I would just say I wouldn't be surprised
20 if the same products weren't used throughout the
21 corporation.

22 Q. Okay. But you have no knowledge that they
23 were, in fact, at Duke Energy; is that correct?

24 A. I don't have anything explicit. You know,
25 it didn't really come up in anything in the record.

1 Q. Can you rule out that Mr. Rhyne worked
2 with a CRC product other than CRC 3-36?

3 A. No, because there -- there's only that one
4 snapshot of the approved chemicals from 1992.

5 Q. Can you rule out that, if Mr. Rhyne worked
6 with a CRC product, it was a CRC product that did
7 not contain benzene or benzene-containing solvents?

8 A. Oh, I see. Okay.

9 No, it didn't really -- you know, I didn't
10 really see anything in the record that would shed
11 any light on that.

12 Q. You understand from reviewing Mr. Rhyne's
13 testimony that he claims to have used the CRC
14 product to clean parts such as nuts, bolts,
15 washers, end bell flanges, tools, and heat exchange
16 components?

17 And, in fairness, I'm reading from 12 and
18 13 of your report.

19 A. (Witness reviews document.) Right. I
20 remember that. And that really is pretty much
21 straight from his deposition.

22 So yes.

23 Q. All right. Do you see any information in
24 the record that employees at Duke cleaned equipment
25 with lubricants or corrosion inhibitors?

1 Commonwealth of Massachusetts
2 Middlesex, ss.
3
4

5 I, P. Jodi Ohnemus, Notary Public
6 in and for the Commonwealth of Massachusetts,
7 do hereby certify that there came before me
8 on the 6th day of November, 2019, the deponent
9 herein, who was duly sworn by me; that the ensuing
10 examination upon oath of the said deponent was
11 reported stenographically by me and transcribed
12 into typewriting under my direction and control;
13 and that the within transcript is a true record of
14 the questions asked and answers given at said
15 deposition.

16 I FURTHER CERTIFY that I am neither
17 attorney nor counsel for, nor related to or
18 employed by any of the parties to the action
19 in which this deposition is taken; and, further,
20 that I am not a relative or employee of any
21 attorney or financially interested in the outcome
22 of the action.

23 IN WITNESS WHEREOF I have hereunto set my
24 hand and affixed my seal of office this
25 10th day of November, 2019, at Waltham.



26 P. Jodi Ohnemus, RPR, RMR, CRR
27 CSR, Notary Public,
28 Commonwealth
29 of Massachusetts
30 My Commission Expires:
31 3/14/2021